IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 846 of 2001
in

SPECIAL CIVIL APPLICATION No 5330 of 1991

with

CIVIL APPLICATION No 3106 of 2001

with

MISC. CIVIL APPLICATION No 828 of 2001
in
SPECIAL CIVIL APPLICATION No 5330 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

ARVINDKUMAR N BHATT

Appearance:

1. LETTERS PATENT APPEAL No. 846 of 2001
   MR NAGESH SOOD, LD.AGP for Appellants
   MR TRILOK J PATEL for Respondent No. 1
2. Civil Application No. 3106 of 2001
   MR NAGESH SOOD, LD.AGP for Applicants
   MR TRILOK J PATEL for Respondent No. 1
3. Misc. Civil Application No.828 of 2001
   MR TRILOK J PATEL for Applicant
   MR NAGESH SOOD, LD.AGP for Respondents

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 17/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. Shri Natvarlal Muljibhai Bhatt was appointed as Police Constable in the office of Anti Corruption Bureau ("ACB" in short). He joined the service in the year 1951 and served for 18 years upto 1969. On 10th April, 1969, he died in civil hospital because of cancer, leaving behind him his widow and two minor sons. He was totally honest and upright person and, therefore, with his death, his family was totally ruined as it was in very poor pathetic financial condition. His widow could not bear the shock of untimely death of her husband and, therefore, became lunatic. There was none in her family to look after two minor sons, therefore, both his minor sons were admitted in Mahajan Anath Ashram Balashram at Surat. Arvindkumar son of Natvarlal stayed there for a period of about 12 years and passed the S.S.C. Examination from the said Ashram. He attained majority in 1983. Scheme was introduced in 1975 to give appointment on compassionate ground to the persons of the family who were in the government service. He was staying in Anath Ashram. He became major in 1983, therefore, as soon as he came to know about it, he immediately applied in 1985 for giving him appointment on compassionate ground on the post of police constable or any other suitable post. Respondent No.1 entertained his application. Respondent No.2 asked the Police Commissioner, Ahmedabad to consider his case for giving appointment on compassionate ground. There upon, by letter dated 8th March, 1989, Arvindkumar was asked to fill up the form and remain present with material documents including death certificate of his father. On

17th March, 1989, Police Commissioner, Ahmedabad even asked Arvindkumar to remain present in his office for medical check up. Accordingly, he remained present for physical test also. Unfortunately, no further progress was there in the matter and he was not issued any appointment order till 1991. Therefore, at last Arvindkumar son of late Natvarlal filed petition i.e. Special Civil Application No.5330 of 1991 before this Court seeking appointment on compassionate ground.

2. The matter was admitted long back and finally it came to be allowed by the learned Single Judge of this Court (Coram: H.K.Rathod, J.) on 11.8.2000. This has been challenged in this appeal by the appellant State of Gujarat and others.

3. Though the learned Single Judge allowed the petition, the appellants have not complied with that order, therefore, the original petitioner Arvindkumar was obliged to file contempt application i.e. Misc.Civil Application No.828 of 2001 which is also placed alongwith this appeal.

4. This appeal was heard by us before Diwali Vacation and the appellants were asked to consider the case of the respondent - original petitioner for giving him appointment on compassionate ground as ordered by the learned Single Judge of this Court. Accordingly, the appellants have now complied with the order and the respondent has been appointed on the post of police constable after due medical test.

5. Under the circumstances, we are of the considered opinion that, when the order passed by the learned Single Judge is fully complied with, then nothing survives in the matter and appeal was required to be disposed of. However, learned AGP Mr.Sood submitted that, important questions of law are involved in this appeal which are required to be decided by this Court in this appeal. Firstly, he submitted that, in the instant case, father of the respondent - original petitioner died way back in 1969 when the scheme for appointing a person on compassionate ground was not in existence. It came into force only in 1975, and the respondent had applied for the first time in 1985, therefore the learned Single Judge was wrong in allowing the petition of the respondent original petitioner. In support of his submission, he placed reliance on the two decisions of the Hon'ble Supreme Court:

(1) 2002 Vol.10 SCC 246.

(2) 2000 Vol.7 SCC 192.

First judgment deals with the case where there was no scheme for appointing a person on compassionate ground. Second decision is on the point of paragraph.

6. Having regard to the peculiar facts and circumstances of the case stated hereinabove by us, and the fact that not only mother of the original petitioner became lunatic on the untimely death of her husband but his other brother also became lunatic while staying in Anath Ashram, we do not want to entertain this appeal. Fortunately, petitioner has survived this long legal battle and when he is now appointed, then in our considered opinion, without expressing any opinion regarding legality and validity of the judgment and order passed by the learned Single Judge, the appeal is required to be dismissed. The points raised in this appeal can be decided in an appropriate case. Therefore, without expressing any opinion on the merits of the case, we are of the considered opinion that, when substantial justice has been done to the respondent- original petitioner by the learned Single Judge by allowing the writ petition, then we should not interfere with such orders in our Letters Patent Jurisdiction. Accordingly, this appeal is dismissed without expressing any opinion on the merits and demerits of the case. Before parting, we make it clear that we have neither laid down any law nor approved the order of the learned Single Judge on merits, therefore, questions raised in this matter be decided in a fit case.

7. As main appeal is dismissed, Civil Application No.3106 of 2001 for stay does not survive and accordingly it is dismissed.

8. As we have dismissed the appeal, learned advocate Mr.Trilok Patel for the applicant does not press his contempt application. Accordingly Misc.Civil Application No.828 of 2001 is dismissed.

(B.J. Shethna, J.)

(Ravi R.Tripathi, J.)

syed/